

# Revenue Canada Offers Guidance to Charities\*

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1. *What is a realistic length of time that should be allowed to obtain the registration of a charity after the initial filing?*

The time required for registration varies with:

- a) completeness of application (i.e., governing documents, full details of activities, financial statement or budget, name, address and occupation of executive or directing officers, answers to questions 5 and 6, signature of authorized officer); and
- b) clarity of objects (i.e., no elaborate language that obscures real purpose(s)).

Mail and clerical processing takes approximately three weeks and internal processing requires four to six weeks.

The length of time required could be reduced by one to two weeks if the decision is relatively simple or increased if the decision is complex.

2. *What are the internal guidelines followed by the branch in determining whether a charitable registration should be given? Specifically:*

- a) *how many directors or trustees must there be?*
- b) *what are the requirements when a charity is terminated?*
- c) *what are the limitations on investment powers or other powers?*
- d) *what are the rules regarding payment of directors and trustees?*

- a) A minimum of three trustees is necessary if the organization is unincorporated. An exception is the employee's charity trust where a lone trustee—the employer—is usual.

If the entity is a corporation it must comply with the applicable legislation.

- b) Same requirements as those for an active charity. Particular attention should be given to subsection 149.1(16).

- c) A private foundation—149.1(4):

- may not carry on any business;
- may not, since June 1, 1950, acquire control of any corporation; and
- may not, since June 1, 1950, incur debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

\*These questions were among those answered by Mrs. Wardle at a continuing education seminar on *The Charitable Mosaic* convened by The Canadian Bar Association—Ontario, September 27, 1983.

Calculation of the private foundation's disbursement quota requires that capital properties, other than those used by the charity in its operations or those being accumulated with the Minister's approval, be segregated into qualified and non-qualified investments (subsection 149.1(1)(i)).

A public foundation—149.1(3):

- may not carry on business that is not a related business of that charity;
- may not, since June 1, 1950, acquire control of any corporation; and
- may not, since June 1, 1950, incur debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

d) Directors and trustees may not receive remuneration unless it is in payment for services rendered to the charity or to reimburse them for out-of-pocket expenses incurred on behalf of the charity.

3. *To what extent does the branch decide whether an organization is to be registered as a foundation, private foundation, charitable organization or Canadian Amateur Athletic Association independently of the application for registration?*

Charities are not registered as foundations (public/private) or organizations. They are registered as “charities”.

Which designation applies in a given taxation year is determined each year after the fact (section 149.1(6)) and this designation determines the expenditure requirement for the particular taxation year.

4. *Is any review process followed to determine whether organizations filing as non-profit organizations should be reclassified as charities or whether foundations should be reclassified?*

There is no all-inclusive review process. Although a review of the facts is necessary to determine to which category an organization belongs, not every charity is reviewed every year.

It should be noted that even if a group which has filed as a non-profit organization under section 149.1(L) were determined to be a charity it would be subject to tax until it registered as a charity.

5. *When a charity has had its registration revoked, is there any administrative process by which it may be reinstated rather than being wound up?*

Yes. Although there is no provision for “reinstatement”, we do re-register if the organization still qualifies. This happens frequently with those whose registration was revoked for failure to file a return(s). Re-registration requires that a new application be filed (in lieu of governing documents we do accept a statement, signed by at least two officers, that there has been no change to them) which includes all delinquent returns and two financial statements.

6. *What guidelines are followed when permission to accumulate is sought? Specifically:*
- a) *can a foundation set aside and accumulate a lump sum designated to fund a research grant to another charity over a period of years?*
  - b) *can a charitable organization accumulate a fund to support a specific program or research on a continuing basis over an indeterminate number of years?*

The provisions regarding accumulation (section 149.1(8)) provide only for the *postponement* of the expenditure of funds for a given period. Accumulation is not a means for accumulating capital if only the income from its investment would be expended. (Scholarship funds are the exception.)

Note that section 149.1(9) deems amounts accumulated that are not used for the “purpose” to be income if (a) they are not used before the expiration of the period, or (b) if the charity decides not to use them for that “particular purpose”.

- a) In light of these general guidelines we would have to review the specifics of the request before a response would be possible.
  - b) See the response to a).
7. *What is the extent of the review or audit process applied to public information returns?*

Review is on a random basis.

We view the public information return principally as a public relations document. However, both the public information return and the T2052 return are reviewed by our auditors when they are conducting an audit and by our examiner when a review is being conducted.

8. *When is the filing of the T2 corporate or T3 trustee return considered obligatory? Are non-filing penalties imposed?*

Section 150 requires the filing of T2 and T3 returns therefore such filing is obligatory. If they are not filed a request or demand may be made.

There is no penalty for failing to file. There are penalties, however, for late filing. Some discretion may be (and normally is) used when the department is considering the imposition of penalties.

Questions concerning T2's and T3's should be directed to the District Taxation Office.

9. *What triggers an audit?*

Audits are undertaken for a variety of reasons including:

- random selection in the structured audit program;
- audit projects directed to a particular category;
- information provided by informers; and
- interest aroused by media reports.

10. *What types of requests for information should be directed to the District Office and what to Ottawa?*

Direct all requests to Ottawa head office except requests for forms, information concerning the filing of T2's and T3's and non-profit organizations (i.e., 149(1)(L)).

11. *Has Revenue Canada revoked any charity's registration for "political" activities?*

The confidentiality provisions of the *Income Tax Act* prevent us indicating why certain taxpayers have had their charitable registration revoked. When a taxpayer's registration is revoked the name is published in the *Canada Gazette* but reasons are not given.

12. *Can a charity avoid revocation for "political" activity by informing its members and the public of the facts and urging them to express their own opinions?*

Unfortunately, we have not been provided with enough information to give you a specific response. The *Income Tax Act* requires a charitable organization to devote all of its resources to charitable activities (section 149.1(1)(b)). If an organization conducted a campaign designed to influence legislators to act according to the special interest of a group, the Department would consider the activity to be political and hence contrary to the provisions of the Act.

13. *Is any concerted effort being made by any group to ask Revenue Canada to permit charities to lobby in a legitimate fashion for changes within the scope of their activities?*

As it is the responsibility of Revenue Canada to administer the legislation and the responsibility of Finance to develop new legislation, we would refer you to the Department of Finance.

14. *Are there restrictions on a charitable organization's using its funds outside Canada in furtherance of its objects? Any additional controls? Audit requirements? Requirements for pre-authorization?*

a) The active advancement of the charitable objectives recognized in the common law can be carried out anywhere in the world, provided that there is a true charitable objective and that it can be demonstrated.

b) Section 149.1(1)(b) provides that a charitable organization must devote all of its resources to charitable activities carried on by the organization itself. Section 149.1(6) provides that grants of less than 50 per cent of income to "qualified donees" shall be considered to be charitable activities carried on by the organization itself.

c) Adequate supporting documentation and evidence that the charitable purposes recognized by the common law are being carried out by the organization itself are essential for any active charitable endeavour, whether carried out inside or outside of Canada.

15. *To what extent may a charitable organization operate profit-making businesses or sidelines before it loses its tax registration? Is there a statutory or common law limitation? For example, could a charity operate a restaurant or an auto sales business that would generate more income than the donations which were formerly its entire income?*

The decision involves a question of degree and each case is considered on its own merits. The *Income Tax Act* provides a statutory basis for the administrative practice of permitting a charity to run a related business.

Charitable organizations and public foundations can carry on related businesses. (Section 149.1(1)(j) indicates that “‘related business’ includes a business that is unrelated to the objects of the charity if substantially all of the people employed by the charity in the carrying on of that business are not remunerated for such employment”.)

Private foundations cannot carry on any business (section 149.1(14)).

Both public and private foundations are specifically prohibited from acquiring control of a corporation (sections 149.1(3) and (4)).

If the primary activity of a charitable organization is a non-charitable business, it would offend the Act.

16. *Can a charitable organization that operates within the confines of the statement of aims and objectives submitted at the time of application for registration rest assured that Revenue Canada will not deem it to be carrying on any related business? In other words, has Revenue Canada—by registering—ruled that all activities mentioned in the application for registration are charitable?*

No, Revenue Canada always reserves the right to question activities if it believes they go beyond charity.

17. *If a “non-share” company was incorporated with charitable objects but its main purpose is to oppose location of waste disposal sites and other similar government decisions:*

a) *could it be registered as a charity even though its objects are political in nature?*

b) *If not, can the public trustee require the corporation to amend its objects so that they do not contain any power to accept gifts?*

c) *How should such a company be incorporated?*

d) *What is the tax treatment of a “non-profit” company (such as the above) which is not a registered charity (assuming it would not be accepted for registration)?*

- a) No, charitable organizations must devote all of their resources to charitable activities. To pursue charitable objects by non-charitable means is precluded by the definition set out in paragraph 149.1(1)(b) of the *Act*.
- b) We would suggest that you direct this question to the public trustee of the appropriate province.

- c) There is no requirement under the *Income Tax Act* that an organization be incorporated.
- d) It depends upon the facts. We would refer you to section 149(1)(a) to (y) of the *Act*.